

AMENDED IN ASSEMBLY JUNE 28, 2007

AMENDED IN SENATE APRIL 17, 2007

SENATE BILL

No. 1001

Introduced by Senator Perata

February 23, 2007

An act to amend Sections 13201~~and 13205~~, *13205*, and *13388* of, and to add Sections 13194, 13230, and 13232 to, the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1001, as amended, Perata. California regional water quality control boards: membership and program withdrawal.

(1) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act (Porter-Cologne). Existing law designates the state board as the state water pollution control agency for all purposes stated in the federal Clean Water Act and any other federal act. Federal regulations provide for program revision and withdrawal and the voluntary transfer of program responsibilities when a state program no longer complies with the requirements of the federal Clean Water Act and the state fails to take corrective action.

This bill would make legislative findings and declarations related to the regional water boards and their responsibilities under the federal Clean Water Act and Porter-Cologne. The bill would require the state board to contract with the Department of Finance for the preparation of a detailed report on the financial basis and programmatic effectiveness

of the state board's fee-based water quality programs. The bill would require the state board to submit the report to the Governor and the Legislature on or before February 1, 2009. The bill would require the state board to prepare and adopt regulations for each regional board to ensure statewide compliance with state and federal water quality laws. At least every 3 years, the state board would be required to review and report to the Governor and Legislature on each regional board and its implementation of its water quality regulatory responsibilities.

The bill would authorize the state board to order the commencement of program withdrawal proceedings on its own initiative or in response to a petition from an interested person. If the state board concludes that a regional board has not administered water quality programs in conformity with the appropriate acts and regulations, the state board is required to list the deficiencies in the program, and provide the regional board a reasonable time to take corrective action. If the regional board fails to take the appropriate corrective action within the prescribed timeframe, the state board is required to either withdraw the regional board's program authority or set a schedule for review of program authority after a probationary period. The bill would specify that upon the withdrawal of a regional board's authority, the withdrawal order would state whether the state board or another regional board would become the implementing agency within the jurisdiction of the former regional board.

(2) The Porter-Cologne Water Quality Control Act establishes 9 regions for the purposes of the act, each governed by a California regional water quality control board of 9 members appointed by the Governor, with prescribed experience or associations. The act requires that each regional board member represent and act on behalf of all the people and reside or have a principal place of business within the region. Under the act, if an appointment cannot be made for the county government member because of a restriction under existing law on income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements, the act authorizes the appointment of persons not specifically associated with any category.

This bill would revise those provisions to establish regional boards of 5 7 members, ~~with positions for members with a degree or prescribed experience in biological science, public sector finance, urban planning, public health, and environmental justice to be appointed by the Governor.~~ Each member would be required to be appointed on the basis

of his or her demonstrated interest and proven ability in the field of water pollution control and understanding of the water pollution problems in their region and his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board. ~~If an appointment cannot be made in accordance with those requirements for specified experience, the bill would require the appointment of a person who possesses at least 10 years of experience in improving water quality.~~

(3) Existing law provides that each member of a regional board receive \$100 for each day that member is engaged in the performance of official duties, except as specified, and that the total compensation received by members of each regional board not exceed, in any one fiscal year, the sum of \$13,500.

This bill would provide that each regional board member receive \$500 for each day that member is engaged in the performance of official duties. The bill would specify that the total compensation received by members not exceed \$30,000.

(4) Existing law prohibits a person from being a member of the state board or a regional board if that person receives, or has received, during the previous 2 years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements.

The bill would revise this provision by specifying that no person shall be a regional board member if that person receives, or has received, income directly or indirectly from applicants for waste discharge requirements associated with discharges in that region.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) The 1949 Dickey Water Pollution Act established nine
- 4 regional water boards located in each of the major California
- 5 watersheds. The regional boards have primary responsibility for
- 6 overseeing and enforcing the state's pollution abatement programs.
- 7 The act established five gubernatorial appointees, representing
- 8 water supply, irrigated agriculture, industry, and municipal and
- 9 county government in that region, to serve on each regional water

1 board. This number has since grown to nine members and includes
2 a public member seat, two members with special competence in
3 water quality, and a seat for a member associated with a recreation,
4 fish, or wildlife nongovernmental organization.

5 (b) The complexity of water quality and water supply laws and
6 technologies in the intervening 58 years has grown exponentially,
7 while the expertise and low pay on the regional boards have
8 remained relatively constant. The significant complexity of
9 problems and laws brings an increased need for expertise on the
10 regional board, yet the substantive requirements for the regional
11 board member position have not similarly increased. The large
12 number of appointments ~~(94~~ (81 regional board members) makes
13 tracking the members' performance difficult, heightening the need
14 for the clear, strong expertise of each board member.

15 (c) The Clean Water Act (33 U.S.C. Sec. 1252 et seq.) envisions
16 delegation of water pollution control responsibility to the states.
17 Federal regulations establish procedures for approving a state
18 program and the responsibilities of that program. Provisions for
19 withdrawal of that authority are found at Section 123.63 of Part
20 40 of the Code of Federal Regulations and state that the United
21 States Environmental Protection Agency may withdraw federal
22 approval when a state program no longer complies with the
23 requirements of Clean Water Act and the state fails to take
24 corrective action. These circumstances include the state's failure
25 to issue permits, act on violations of permits or other program
26 requirements, seek adequate enforcement penalties or to collect
27 administrative fines when imposed, inspect and monitor activities
28 subject to regulation, or develop an adequate regulatory program
29 for developing water quality-based effluent limits in National
30 Pollution Discharge Elimination System permits.

31 (d) The Porter-Cologne Water Quality Control Act (Division 7
32 (commencing with Section ~~13000~~ 13000) of the Water Code)
33 designates the state board as the state water pollution control
34 agency for all purposes stated in the Clean Water Act and any
35 other federal act. Section 13260 of the act places responsibility on
36 the regional boards for ensuring that waste discharge reports are
37 filed by any person discharging, or proposing to discharge waste
38 in any region that could affect the quality of "waters of the state,"
39 and that appropriate regulatory action is taken after the filing of
40 the reports. The act defines "waters of the state" as "any surface

1 water or groundwater, including saline waters, within the
2 boundaries of the state.”

3 (e) California is the only state in the nation with autonomous
4 regional water boards that implement the Clean Water Act program
5 requirements.

6 (f) Numerous state and federal mandates are not being met in
7 California. They include the following:

8 (1) Section 305(b) of the Clean Water Act requires each state
9 to prepare a water quality report at least every two years; California
10 has not submitted a report to the United States Environmental
11 Protection Agency since 2002. Moreover, despite the mandate that
12 all waters are to be assessed, the 2002 document reports only on
13 the health of a third of the state’s lakes and reservoirs, 22 percent
14 of the state’s coastal shoreline miles, and a mere 15 percent of
15 river and stream miles.

16 (2) Although Porter-Cologne requires the regional boards to
17 regulate all discharges to surface water or groundwater that “could
18 affect the quality of the waters of the state,” every one of the
19 regional boards has failed to regulate one or more major sources
20 of polluted runoff into surface water, and there is virtually no such
21 regulation of discharges to groundwater. As a result, polluted runoff
22 is implicated in more than 76 percent of the waters identified as
23 “impaired” in California.

24 (3) The state has established approved cleanup plans for only
25 a handful of the water bodies listed as “impaired” for one or more
26 pollutants, and only a small fraction of those waters have since
27 been deemed “clean.” Many of these listings will not have cleanup
28 plans before 2019, with no deadlines set for actual cleanup of the
29 waters listed.

30 (4) A February 2000 report by the Legislative—Analysts’
31 *Analyst’s* Office identified numerous deficiencies in permit
32 issuance, inspections, inconsistencies in enforcement across the
33 state, inadequate enforcement followup, and other problems, most
34 of which continue today.

35 (5) An August 2006 state board enforcement report to the
36 Legislature concluded that the water board staff does not detect
37 violations for several months after they occur and showed
38 significantly variable numbers of enforcement actions and violation
39 rates across regional water boards.

40 SEC. 2. Section 13194 is added to the Water Code, to read:

13194. The state board shall contract with the Department of Finance for the preparation of a detailed report, which shall be submitted on or before February 1, 2009, to the Governor and the Legislature, on the financial basis and programmatic effectiveness of the state board's fee-based water quality programs, with a particular focus on the Waste Discharge Permit Fund. This report shall include an analysis of all major expenditures, the amount and adequacy of fees and fines collected, the amount and adequacy of staffing and equipment levels, and other relevant issues. The report shall also identify at the state board and regional board level, for both surface water and groundwater, those state and federal water quality mandates that may be supported through fees for which fees are either not being assessed, or are not being assessed at levels necessary to implement the mandates as required by law. The report shall recommend measures to improve the efficiency and effectiveness of the state board's fee-based water quality programs, including, but not limited to, measures to establish required surface water and groundwater, and to ensure adequate and equitable funding for all programs.

SEC. 3. Section 13201 of the Water Code is amended to read:

13201. (a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of the following five members appointed by the Governor, each of whom shall represent and act on behalf of all the people and shall reside or have a principal place of business within the region:

(1) One person who holds at least a master's degree in biological science, such as biology or ecology, with preferred experience in aquatic biology or ecology.

(2) One person who has experience with public sector finance, with preferred experience with water quality or watershed improvement projects.

(3) One person who holds at least a master's degree in urban planning or a closely related discipline, with preferred experience with programs for achieving water quality objectives.

(4) One person who holds at least a master's degree in public health, with preferred expertise concerning the health consequences of impaired water quality.

(5) One person who has experience representing an environmental justice community, with preferred knowledge about the impact of water quality on low-income communities. *seven*

1 *members appointed by the Governor, each of whom shall represent,*
2 *and act on behalf of, all the people, and shall reside or have a*
3 *principal place of business within the region.*

4 (b) Each member shall be appointed on the basis of his or her
5 demonstrated interest and proven ability in the field of water
6 pollution control and understanding of the water pollution problems
7 in their region.

8 (c) Each member shall be appointed on the basis of his or her
9 ability to attend substantially all meetings of the regional board,
10 and to actively discharge all duties and responsibilities of a member
11 of the regional board.

12 (d) All persons appointed to a regional board are subject to
13 Senate confirmation, but are not be required to appear before any
14 committee of the Senate for purposes of such confirmation, unless
15 specifically requested to appear by the Senate Committee on Rules.

16 (e) Insofar as practicable, appointments shall be made in such
17 manner as to result in representation on the board from all parts
18 of the region.

19 ~~(f) Notwithstanding subdivision (a), if an appointment cannot~~
20 ~~be made in accordance with subdivision (a), the appointment shall~~
21 ~~be made of a person who possesses at least 10 years of experience~~
22 ~~in improving water quality.~~

23 SEC. 4. The reduction in the number of members on each
24 regional board required by subdivision (a) of Section 13201 of the
25 Water Code, as amended by Senate Bill 1001 of the 2007–08
26 Regular Session of the Legislature, shall be achieved according to
27 the ordinary expiration of terms of incumbents and other vacancies.
28 After a regional board consists of only ~~five~~ *seven* members, an
29 individual subsequently appointed to fill a vacancy shall possess
30 the qualifications specified in Section 13201 of the Water Code.

31 SEC. 5. Section 13205 of the Water Code is amended to read:

32 13205. Each member of a regional board shall receive five
33 hundred dollars (\$500) for each day during which that member is
34 engaged in the performance of official duties, including preparation
35 for regional board meetings, except that no member shall be
36 entitled to receive the five hundred dollars (\$500) compensation
37 if the member otherwise receives compensation from other sources
38 for performing those duties. The total compensation received by
39 members of each regional board shall not exceed, in any one fiscal
40 year, the sum of thirty thousand dollars (\$30,000). A member may

1 decline compensation. The annual compensation provided by this
2 section shall be increased in any fiscal year in which a general
3 salary increase is provided for state employees. The amount of the
4 increase provided by this section shall be comparable to, but shall
5 not exceed, the percentage of the general salary increases provided
6 for state employees during that fiscal year. In addition to the
7 compensation, each member shall be reimbursed for necessary
8 traveling and other expenses incurred in the performance of official
9 duties.

10 SEC. 6. Section 13230 is added to the Water Code, to read:

11 13230. (a) The state board shall prepare and adopt regulations
12 that each regional board shall meet to ensure statewide compliance
13 with the requirements of both state and federal water quality laws.
14 The requirements shall reflect those requirements for program
15 approval under the Clean Water Act (33 U.S.C. Sec. 1251 et seq.)
16 and federal regulations (Section 123.1 of Title 40 of the Code of
17 Federal Regulations et seq.), as well as the mandates of the
18 Porter-Cologne Water Quality Control Act (Division 7
19 (commencing with Section 13000)) and state regulations.

20 (b) At least every three years, the state board shall review, and
21 report to the Governor and the Legislature, on each regional board
22 and its implementation of its water quality regulatory
23 responsibilities. The state board's review shall include periodic
24 state board inspections of facilities within the jurisdiction of each
25 regional board for the purpose of evaluating whether the regional
26 board is appropriately applying and enforcing state and federal
27 law, and state standards as described in subdivision (a).

28 (c) If the state board determines through its triennial reviews
29 that key requirements are ~~in~~ not being met by regional boards
30 across the state, the state board shall include in its report and
31 implement recommendations for statewide guidance, policy or
32 trainings that are needed to address these deficiencies.

33 SEC. 7. Section 13232 is added to the Water Code, to read:

34 13232. (a) (1) The state board may order the commencement
35 of program withdrawal proceedings on its own initiative or in
36 response to a petition from an interested person alleging the failure
37 of a regional board to comply with the requirements of
38 Porter-Cologne or the federal Clean Water Act. These
39 circumstances include, but are not limited to, the following:

1 (A) Failure to exercise adequate control over activities required
2 to be regulated under applicable state or federal law, including
3 failure to issue permits, waste discharge requirements or waivers
4 of waste discharge requirements.

5 (B) Repeated issuance of permits, waste discharge requirements,
6 or waivers or waste discharge requirements that do not conform
7 to the requirements of applicable state or federal law.

8 (C) Failure to conduct adequate oversight over discharges
9 subject to memoranda of agreement or understanding with other
10 agencies

11 (D) Failure to comply with the public participation requirements
12 of applicable state or federal law.

13 (E) Failure to meet the discharger identification, inspection,
14 penalty enforcement, and other requirements of the regional board's
15 enforcement program.

16 (F) Failure to develop an adequate regulatory program for
17 developing water quality-based effluent limits in National Pollution
18 Discharge Elimination System permits.

19 (2) The state board shall respond in writing to any petition to
20 commence regional board program withdrawal proceedings, and
21 may conduct an informal investigation of the allegations in the
22 petition to determine whether cause exists to commence
23 proceedings under this section. The state board's order
24 commencing proceedings under this section shall fix a time and
25 place for the commencement of the hearing and shall specify the
26 allegations against the regional board that are to be considered at
27 the hearing. Within 30 days the regional board shall admit or deny
28 these allegations in a written answer. The party seeking withdrawal
29 of the regional board's program shall have the burden of producing
30 the evidence in a hearing under this paragraph.

31 (b) If the state board concludes that the regional board has not
32 administered mandated state and federal water quality programs
33 in conformity with the appropriate acts and regulations, the state
34 board shall list the deficiencies in the program or programs and
35 provide the regional board a reasonable time, not to exceed 90
36 days, to take such appropriate corrective action as the state board
37 determines necessary.

38 (c) Corrective actions shall include specific requirements for
39 issuing permits, conducting more frequent inspections and
40 evaluations, and taking additional enforcement actions, in addition

1 to other actions necessary for improving regional board
2 performance.

3 (d) Within the timeframe prescribed by the state board, the
4 regional board shall take such appropriate corrective action as
5 required by the state board, and shall file with the state board and
6 all parties a statement certified by the regional board that
7 appropriate corrective action has been taken and that funding has
8 been established to support continuation of each corrective action,
9 as needed. The state board may require a further showing in
10 addition to the certified statement.

11 (e) If the regional board fails to take the appropriate corrective
12 action and file a certified statement within the timeframe prescribed
13 by the state board, the state board shall issue a supplementary order
14 that either withdraws the regional board's program authority, or
15 sets a schedule for review of program authority after a probationary
16 period during which additional corrective actions shall be required.

17 (f) During the probationary period, the state board or another
18 regional board shall assume partial or total responsibility for the
19 specified regional board's duties.

20 (g) If at the conclusion of the probationary period, the regional
21 board has taken and certified appropriate corrective action, the
22 state board shall issue a supplementary order stating that the
23 regional board's authority to implement state and federal law is
24 not withdrawn.

25 (h) (1) If, at the end of the probationary period, or the end of
26 the state board's withdrawal proceedings if there is no probationary
27 period, the state board determines that the regional board has not
28 met the criteria outlined in Section 13230, the state board shall
29 withdraw authority from the regional board, notwithstanding the
30 Porter-Cologne Water Quality Control Act (Division 7
31 (commencing with Section 13000)). The withdrawal order shall
32 state whether the state board, or another regional board, or both,
33 shall become the implementing agency within the jurisdiction of
34 the former regional board.

35 (2) Withdrawal of authority shall continue until the regional
36 board makes, in a public hearing, certified demonstrations
37 necessary to ensure immediate and continued compliance with
38 applicable state and federal law, in accordance with the criteria
39 established under subdivision (a) of Section 13230.

1 (i) Withdrawal of authority under this section does not relieve
2 any person from complying with the requirements of state or
3 federal law, nor does it affect the validity of actions by the state
4 prior to withdrawal.

5 *SEC. 8. Section 13388 of the Water Code is amended to read:*

6 13388. (a) Notwithstanding any other provision of this division
7 or Section 175, no person shall be a member of the state board ~~or~~
8 ~~a regional board if he~~ *that person* receives or has received during
9 the previous two years a significant portion of his *or her* income
10 directly or indirectly from any person subject to waste discharge
11 requirements or applicants for waste discharge requirements
12 pursuant to this chapter. ~~This section shall become operative on~~
13 ~~March 1, 1973.~~

14 (b) *Notwithstanding any other provision of this division or*
15 *Section 175, no person shall be a member of a regional board if*
16 *that person receives, or has received, during the previous two*
17 *years, a significant portion of his or her income directly or*
18 *indirectly from any person subject to waste discharge requirements*
19 *or applicants for waste discharge requirements associated with*
20 *discharges in that region pursuant to this chapter.*